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# Predicting Jurors' Verdict Leanings in the Trump Era

*The Importance of Political Preference*



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In recent years, American politics have become increasingly polarized and the gap between Republicans' and Democrats' political attitudes has widened considerably. In fact, Pew Research Center illustrated the distribution of Americans' political attitudes in 1994 compared to 2017 revealing that the majority of Americans in 1994 held attitudes that overlapped toward the center of the political spectrum. However, by 2017, the distribution was bimodal with considerably less overlap at the center as Democrats and Republicans moved to more partisan views.<sup>1</sup>

The changes in the American political landscape have caused many trial attorneys to express a renewed interest in the ability to predict jurors' verdicts based on their political leanings. In the civil trial area, defense attorneys are generally wary of liberals, in part due to assumptions that liberal jurors are anti-corporate, predisposed to advocate for "underdogs" or any purported victim of wrongdoing, and rely on the "heart over the head" when making decisions. Conversely, plaintiff attorneys tend to strike conservatives, often based on the notions that conservatives are "victim blamers" who enthusiastically endorse capitalism and personal responsibility.

Although academic research supports some of these assumptions<sup>2</sup>, we were unable to locate any recently published studies indicating that civil jurors' political orientation is a significant predictor of verdict orientation.

In the 1990s and early 2000s, CSI® Litigation Consultants analyzed data collected from both mock jurors and actual jurors to assess the extent to which jurors' political leanings predicted their verdict preferences. Results revealed minimal differences between self-professed Republican and

Democrat jurors' verdict preferences, with "Independent" jurors slightly (but not significantly) more likely to side with plaintiff than their counterparts. However, it is reasonable to expect that jurors' political attitudes may have a stronger impact on their verdict preferences today, given the significant socio-cultural changes that have occurred. In the present paper, we explore the current relationship between political leanings and verdict disposition in civil cases.

Recent quantitative research findings as well as qualitative data collected from actual and mock jurors do indeed indicate that jurors' political attitudes can significantly predict verdict dispositions. Research also suggests, however, that placing a disproportionate emphasis on jurors' political beliefs during jury selection is a mistake that could cost counsel the case. This article reviews research results suggesting the extent to which jurors' political affiliation "matters," and illustrates why jurors' political orientation must be considered within the context of other social and psychological factors to maximize the effectiveness of jury selection strategy.

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## Risks of using jurors' political orientation to predict their verdict orientation: Lessons learned from the field

In general, it is a bad idea to base jury selection decisions on only one or two potential indicators of jurors' predisposed verdict orientation. There are exceptions to this rule, such as when a prospective juror has a case-related experience or belief highly indicative of bias – for example, a juror who has filed more than one sexual harassment complaint in a *venire* for a sexual harassment case, or a juror who affirms that he

or she would always favor an individual over a corporation in a lawsuit regardless of the evidence. It should be noted that many of these isolated experiences and beliefs are grounds for cause strikes.

As experts in litigation psychology, we have directly observed the consequences of over-reliance on jurors' political orientation as a predictor of verdict orientation.

Defense attorneys are often shocked when their “favorite” Republican mock juror is unmasked as a strong plaintiff’s advocate. Two examples from recent CSI projects include a highly conservative accountant who awarded punitive damages in excess of \$1 billion in a product liability case, and a Republican Marine who awarded over \$50 million in a patent case. Both jurors were highly intelligent and passionate about their positions, and successfully convinced pro-defense jurors in their deliberation groups to render pro-plaintiff verdicts.

Many defense attorneys perceive highly liberal jurors as a threat in sexual harassment cases given the traction of the #MeToo movement; whereas many plaintiff attorneys believe that strong liberals are a “sure thing” regardless of their individual beliefs, experiences, and personality traits. Plaintiffs’ counsel was understandably surprised when liberal female jurors in a recent sexual harassment lawsuit brought by female employees against company executives strongly favored the defense. Closer inspection revealed that these jurors were angry at the plaintiffs for not properly documenting the offensive incidents, or for “improperly carrying the flag” for their cause. The strongest predictor of a pro-plaintiff verdict orientation in this case was the extent to which jurors agreed with the statement that “Most married men cheat on their wives” – and there were no differences in the extent to which liberal and conservative jurors agreed with this statement.

A dangerous mistake some litigators make in considering jurors’ political beliefs is to assume that the

overall political culture of a venue automatically gives them a strong advantage against their opponents. We have repeatedly heard arguments such as, “this is a very conservative jurisdiction and people here work hard for their money...jurors won’t award more than \$100,000 and will be highly offended at the plaintiff’s request for millions,” and “People here are hard workers, family-oriented, and conservative...they won’t fall for any of those plaintiff reptile tactics.” Such justifications are often provided to substantiate the decision not to conduct pre-trial research in the form of focus groups or mock trials, and to not retain a qualified litigation consultant to assist with jury selection. The last time we heard such a justification, the jury (in one of the most conservative jurisdictions in the entire nation) awarded nearly \$30 million in damages when counsel had the opportunity to settle for \$3,000,000. Some savvy defense counsel and clients are beginning to reject the “conservative jurisdiction” justification and retain qualified litigation consultants in the aftermath of numerous recent unexpected jury awards in the tens of millions across the nation. Several of these unexpected verdicts were delivered in conservative rural venues in the Midwest.

A consistent trend in the examples above is obfuscation of political conservatism with “litigation conservatism” – which are ultimately different animals. Although jurors’ political orientation may be important in certain cases, trial attorneys must understand the limitations of relying on this variable when making critical jury selection decisions.

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## Comparing liberal and conservative jurors: Are they really that different?

Research reveals several differences between liberals and conservatives in terms of their values, beliefs, and personality traits. The results of multiple studies conducted by preeminent scholar Jonathan Haidt indicate that liberals and conservatives differ in terms of their “moral foundations,” which subsequently guide their judgements<sup>3</sup>. Liberals’ moral systems are primarily based on promoting well-being, minimizing harm, and on fairness and reciprocity<sup>4</sup>. Conservatives share those values, but also value loyalty, respect, and purity more than their counterparts. These inherent differences in moral foundations help explain

why liberals are more concerned with achieving social and economic equality, whereas conservatives tend to be more traditional, more inclined to accept the “status quo,” and more likely to endorse beliefs in a Just World and the Protestant Work Ethic (respectively, the beliefs that people get what they deserve and that anyone who works hard can achieve success)<sup>5</sup>. Statistically, conservatives also have a lower tolerance for uncertainty and a higher “need for closure” (i.e., a motivation for a firm answer to a question or resolution to a dispute) compared to liberals<sup>6</sup>. Conversely, liberals score higher than conservatives on measures of “openness to new

experiences,” and are more likely to entertain alternative theories and ideas. There is also some evidence that liberals require more evidence than conservatives before making a judgment or decision<sup>7</sup>.

Despite several other documented differences between self-identified liberals and conservatives, prior research reveals only minor differences between their verdict decisions. The academic literature suggests that, overall, conservatives are more likely than liberals to find

defendants guilty in criminal cases<sup>8</sup>. Few studies have examined the effects of jurors’ political preferences on their verdict orientation in civil cases and the studies that did assess this link found political affiliation to be unrelated to verdict. More specifically, political affiliation was not associated with juror verdicts in a product liability matter<sup>9</sup> nor an environmental damage suit<sup>10</sup>. Importantly, though, these studies were performed in the late 1990s, prior to the extreme partisan divide in current American politics<sup>1</sup>.

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## Political Affiliation and Verdict Disposition: A Current Empirical Exploration

CSI Litigation Consultants maintain and continually add to databases containing information regarding jurors’ reported demographics, beliefs, personality traits, and experiences. These data allow us to identify relationships between individual jurors’ characteristics and their verdict orientation.

To explore jurors’ recent political preferences, a sample of 742 jurors who participated in mock trial or focus group research across 28 different civil cases in the years 2016-2018 were analyzed. The jurors were drawn from multiple locations nationally, representing 11 different states and 23 different counties. The lawsuits jurors evaluated involved allegations of negligence, product liability, premises liability, discrimination and intellectual property disputes.

The sample of jurors was evenly split with 50% males and 50% females. Jurors ranged in age from 18 to 70. Approximately 19% of jurors self-identified as African-American or Black, 49% as Caucasian or White, and 25% as Hispanic. The remaining 7% were Native American, Asian, Native Hawaiian, or self-identified as “other.” All jurors were screened to ensure they were jury eligible. In other words, all jurors were U.S. citizens, of jury eligible age, had never committed a felony, or had committed a felony and had their rights restored.

As shown in Table 1, jurors in the sample were representative of the American population regarding political preference. Jurors identifying as “Independent” (41%) comprised the largest category and approximates the 42% of the American population that Gallup found to be “Independent” as of 2017<sup>11</sup>. Additionally, as reflective of recent Gallup polls indicating a greater percentage of Americans identify as Democrat than Republican, the total of Republicans in the present sample is about 21% compared to 34% of the sample who identified as Democrat.

Table 1. Juror Self-Reported Political Preference

Political Preference	N	Percent
Republican	149	21%
Democrat	253	34%
Independent	304	41%
Green Party	10	1%
Libertarian	17	2%
Other	9	1%
<b>TOTAL</b>	<b>742</b>	<b>100%</b>

The association between juror political preference and individual juror verdict disposition was analyzed using a chi-square test. This statistical test determines if differences in opinions between two or more groups is due to chance. In this instance, we sought to determine whether variations in jurors' verdict preferences across political affiliation categories occurred randomly, or whether there was a statistically significant relationship between these variables that could not be explained by chance.

Given only a very small number of jurors self-identified as Green Party, Libertarian, or Other in political preference, these jurors were excluded from the analysis as there was not enough statistical power to determine their relationship to verdict disposition. As shown below, jurors who identified as Democrat were more inclined to favor the plaintiff, and

those who identified as Republican were more inclined to favor the defense. Surprisingly, jurors who identified as Independent were also more likely to side with the defense.

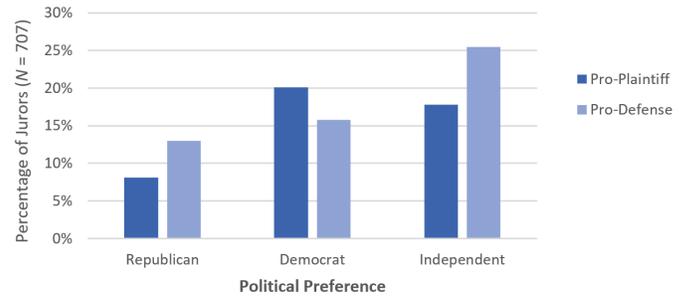


Figure 1. Relationship between juror political preference and verdict disposition.

The chi-square test revealed that there was a statistically significant association between political preference and verdict disposition ( $\chi^2(2) = 16.94, p < .001$ ). The p value in this result indicates that there is less than a .001% probability that the differences displayed in the bar chart above are due to chance.

Attorneys are often understandably uncomfortable asking jurors in the *venire* to state aloud their political affiliation. Courtroom Sciences' consultants recommend obtaining juror political affiliation through a background check when feasible. However, for attorneys who decide against background research on jurors, a common proxy for political affiliation is a question regarding jurors' political philosophy. Attorneys will occasionally ask jurors whether they consider themselves liberal, moderate or conservative in the belief that this will help predict juror verdicts.

First, a test was performed to determine whether political philosophy is a sound proxy for political affiliation. In other words, does political philosophy measure essentially the same construct as political preference? A chi-square analysis was performed to determine whether a statistically

significant association between the two constructs exists. As would be expected, the analysis revealed that juror political preference was significantly associated with juror political philosophy.

Table 2 shows, in the present sample, that the category with the greatest percentage of jurors (44%) consists of jurors who considered themselves "moderate." A small percentage (13%) of jurors self-identified as "extremely liberal" and an even smaller percentage (5%) self-identified as "very conservative."

Table 2. Juror Self-Reported Political Philosophy

Political Philosophy	N	Percent
Extremely Liberal	99	13%
Liberal	166	22%
Moderate	344	48%
Conservative	135	19%
Very Conservative	37	5%
<b>TOTAL</b>	<b>741</b>	<b>100%</b>

The relationship between juror political philosophy and verdict disposition is summarized in the bar graph below. A chi-square analysis revealed a statistically significant association between these two variables, with a less than .01% probability that this association is due to mere chance ( $X^2(4) = 15.17, p < .01$ ). As would be expected, a greater percentage of “extremely liberal” and “liberal” jurors favored the plaintiff and a greater percentage of “conservative” and “very conservative” jurors favored the defense. Consistent with the finding that a greater proportion of jurors identifying as Independent favored the defense over the plaintiff, jurors who characterized their political philosophy as “moderate” were also more likely to favor the defense. However, the differences between the percentages of jurors favoring the plaintiff and those favoring the defense in each political category were not dramatic.

Further analyses revealed that the observed relationships between jurors' political preferences, political

philosophy, and verdict disposition did not depend on case type. That is, the relationships outlined above were present in all types of cases included in our sample; the patterns were generally the same regardless of whether the jurors were considering an intellectual property matter, a premises liability matter, a product liability matter, allegations of discrimination, or other types of civil disputes.

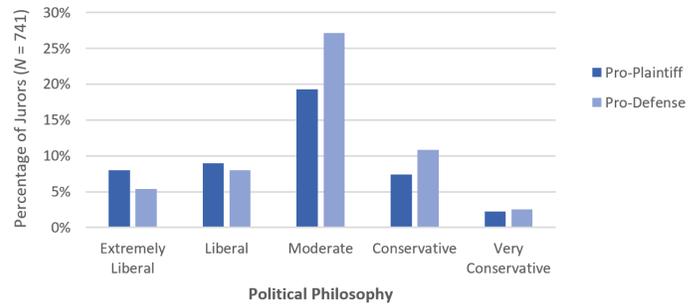


Figure 2. Relationship between juror political philosophy and verdict disposition.

## Understanding the Results

The current findings provide some support for the pervasive notions that conservative jurors are favorable for the defense, whereas liberal jurors are favorable for plaintiffs. Given the size and variability of our sample coupled with our chi-square test results, we do advise counsel and clients that jurors' political preferences and political philosophy can indeed make a difference. However, counsel, clients, and other decision-makers also should consider the limitations of using jurors' political affiliation as an indicator of verdict disposition. Although a slight majority of Republican jurors favored the defense, over one-third favored the plaintiff, and over one-third of Democrat jurors favored the defense.

The finding that jurors identifying as Independent are significantly more inclined to favor the defense was surprising. There is a tendency to ignore “independent” jurors; however, Americans are more likely to self-identify as Independent (approximately 42%)<sup>11</sup> than as Democrats (32%) or Republicans (23%). Research indicates that most members of this large group of Independents are not truly “independent” but lean towards one side or the other – and a slight majority leans towards the left. Thus, we expected

that there would either be no significant differences in Independent or moderate jurors' verdict dispositions, or that this group would be slightly more likely to favor plaintiffs.

There is little research on the psychology of identifying oneself as politically independent or moderate and the characteristics of individuals who belong to this group. Perhaps some political moderates have a heightened ability to hold conflicting attitudes and policy positions than those with more extreme political attitudes; they also may have a higher tolerance for ambiguity and a lower intrinsic need to “belong” to certain social groups or movements. Political moderates or those identifying as Independent also may need more information and evidence prior to making an important decision than their counterparts. Such tendencies would be consistent with a more “pro-defense” juror profile. CSI consultants will continue to explore the relationship between identification as a political Independent or moderate in subsequent research and publications.

In sharing our findings, many attorneys have expressed surprise that the relationships between jurors' political orientation and verdict preference are not stronger. There

are many other explanations for these weak and sometimes unexpected relationships. Asking about jurors' political orientation or conducting background investigations to uncover party affiliation yields piecemeal, basic information. Most of the time, counsel or consultants do not learn how strongly jurors feel about their political preferences, the extent to which they are "active" in politics through advertising, volunteering, or protesting, or why they lean towards one side or the other. Some jurors may self-identify as "Republican" or "Democrat" without a full understanding of the basic policy positions characterizing these parties. Some jurors are single-issue voters (e.g., abortion, gun control, taxation) and support a particular party although

they do not psychologically align with that party.

As individuals' support for specific policies continues to diversify, it will be imperative to consider the multi-dimensional facets of jurors' political orientation and voting behaviors. Jurors' beliefs about economic issues and social issues do not always align with their expressed party preference, and many Generation X and Y conservatives are increasingly rejecting the party's "religious right" base. Indeed, millennials' self-reported political orientation is particularly questionable, as this group is the least likely to vote and the most likely to reject a traditional political identity.<sup>12</sup>

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## Interactions between facets of political orientation and case characteristics

The current findings highlight the importance of analyzing prospective jurors' specific political beliefs and the personality characteristics attached to those beliefs within the context of specific case issues. This can be a complex task but is often necessary to avoid missteps during jury selection. In some circumstances, strong conservative jurors may in fact be favorable for the plaintiff, and self-identified Democrats may render verdicts more favorable to the defense than their Republican counterparts.

Consider medical malpractice cases involving serious injury or death to newborn children. Counsel are often surprised to discover that these cases are often "worth more" in rural conservative jurisdictions than in liberal jurisdictions. This distinction may be driven by social conservatives' strong pro-life beliefs, such that they place a significantly higher value on a newborn's life than pro-choice jurors or jurors who are less passionate in general about abortion issues. More liberal, highly educated jurors are also more demanding of conclusive, scientific proof demonstrating causation. For example, we have seen low-damage or defense verdicts in toxic tort cases tried in San Francisco, in which post-trial juror interviews revealed the presence of highly educated analytical liberals who could not accept the pseudo-science in the plaintiff's causation theories.

The extent to which the plaintiffs and/or injured parties can be held responsible for a negative outcome can have different effects on liberal and conservative jurors'

decision-making. Studies show that liberal and conservative participants provide similar amounts of compensation to an injured individual when that individual is described as blameless for their condition. When the injured individual is described as partially responsible for their own condition – even if an external party is mostly responsible – liberal participants provide significantly higher compensation than conservatives<sup>13</sup>. Counsel should be aware of such findings and their implications for cases when they plan to implicate a plaintiff as partially responsible, and when they plan to frame the case as "a tragic event" that is "no one's fault."

As previously discussed, liberals tend to score higher on measures of openness to new experiences and need for cognition compared to conservatives. These two characteristics are often favorable for defendants in litigation. Openness to new experiences can increase the likelihood that jurors will consider and internalize alternate defense theories, particularly in cases involving more complex evidence and testimony and "battles of the experts." Jurors high in need for cognition require more information before reaching a conclusion. Not only are they less likely than jurors lower in need for cognition to make up their minds after opening statements or the plaintiff's case presentation, but they also require more evidence to determine that the plaintiff has met the burden of proof. Conversely, conservatives' lower tolerance of uncertainty (on average) and greater need for closure may make them

risky jurors for cases in which the only possibility is to blame the defendant and/or accept that a tragic injury or death was completely unpredictable and unavoidable. Research suggests that conservatives are more likely than liberals to experience psychological discomfort in response to such events<sup>14</sup>, and may be motivated to side with the plaintiff and award high damages in an effort to resolve the situation.

Occasionally political events can be strong predictors of verdict orientation. For example, when Obama bailed out AIG, plaintiff and defense jurors were sharply distinguished

from each other in their reactions to this event. Such incidents occur when a social event carries significance that ties the event with other beliefs about society and business that go beyond mere political affiliation.

None of these observations should be interpreted as “rules” for counsel in jury selection. Rather, they are intended to illustrate the nuances and complexities involved in evaluating jurors based on their political beliefs and behaviors. We conclude this article by discussing more effective means of identifying unfavorable jurors.

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## Identifying unfavorable jurors

Savvy trial attorneys know that the most effective jury selection strategies focus on identifying and eliminating unfavorable jurors, rather than on identifying and keeping favorable jurors. Identifying unfavorable jurors entails the prediction of human behavior, which is often considered to be the highest level of scientific achievement. It is tempting for many individuals to believe that they are psychologists and that this function is within their domain of expertise. However, reliance on a “gut feeling” or a single predictor of verdict orientation during jury selection is not advised, especially given the time, effort, and talent counsel expends in preparing a case for trial.

The most accurate predictions of human behavior are based on systematic research. This involves methodologically rigorous means of data collection and statistical data analysis. Both academic research and applied research conducted by CSI Litigation Consultants reveals that jurors' prior behaviors, experiences, personality characteristics, and case-related attitudes and beliefs are much stronger predictors of verdict orientation than demographic characteristics. Not surprisingly, juror behavior is most reliably predicted by a cluster of variables rather than by one single variable. For instance, our research reveals a variety of characteristics associated with pro-plaintiff orientation. One or two indicators are typically insufficient for making jury selection decisions, but jurors who possess many of these characteristics are almost always dangerous for the defense (see Speckart, 2000 regarding predictors of verdict orientation)<sup>15</sup>.

In addition to assessing clusters of statistically validated indicators, counsel also must consider special experiences, attitudes or beliefs that may be particularly strong predictors of juror decisions in a specific case. For example, jurors who strongly believe in the healing powers of alternative medicine, describe themselves as “health nuts,” and distrust the FDA and other related government entities are typically favorable for plaintiffs in toxic tort cases. At CSI, we have collected and analyzed case-specific data to identify the questions that should be answered (either via oral *voir dire*, juror questionnaires, or background investigations) with regard to a variety of matters. The most efficacious predictors of verdict orientation may not be self-evident, as illustrated by our previous example of the sexual harassment case in which jurors' agreement of “most married men cheat on their wives” was the strongest predictor. Pre-trial research projects such as focus groups and mock trials can often illuminate unexpected predictors of verdict orientation.

Strategic jury selection and *voir dire* often become afterthoughts for counsel, as they are swamped with other trial preparation responsibilities. Failing to adequately prepare for *voir dire* and jury selection is one of the most common and costly mistakes that trial lawyers make. To illustrate, defense counsel in the Exxon Valdez case was asked why the Court had used the plaintiff's proposed supplemental juror questionnaire (SJQ) instead of the one they had created. Defense counsel simply answered that, “We just dropped the ball.” When crafted appropriately, a supplemental juror questionnaire (SJQ) is a trial lawyer's

best weapon in seating an advantageous jury. Jury research reveals that jurors are generally more candid in their responses to questionnaire items than to inquiries posed during oral *voir dire*.<sup>16</sup> Prospective jurors' responses to SJQ items can also alert counsel to issues and beliefs that would be grounds for a cause challenge prior to oral *voir dire*; this provides additional time for counsel to consider a strategic line of questioning to maximize the chances of cause strikes. Even jurors' questionnaire response patterns can be informative. A tendency to respond at extreme ends of a scale or to profess knowledge about multiple topics is one indicator of pro-plaintiff verdict orientation; whereas a tendency to respond towards the midpoints of a scale (e.g., "unsure," "don't know" is one indicator of a pro-defense orientation.

Even if the court does not allow SJQs, counsel should request that the list of prospective jurors and the jurors' general information (address etc.) be provided as soon as possible, along with the responses to any standard questionnaires that the court administers. This not only provides time to conduct basic "background checks" on prospective jurors, but also to assess prospective jurors' "digital footprint" and their social media activity. Examination of social media activity can yield highly valuable information. Simply knowing the extent of prospective jurors' social media activity and their use of privacy settings provide another puzzle piece to help identify risky jurors. A review of jurors' social media activity also may illuminate grievance-ridden jurors and jurors who are particularly politically motivated. Knowledge that a prospective juror identifies themselves as "liberal" is one piece of information to incorporate into jury selection strategy. Knowledge that a prospective juror posts photos of themselves with political candidates or at social justice marches on Facebook exponentially adds to counsel's

understanding of the jurors' motivations and likely verdict orientation. Counsel and their staff are free to conduct such investigations within the guidelines of ABA standards<sup>17</sup>. However, relying on a licensed investigative team trained by a qualified Litigation Consultant is, from our experience, the most ethical and efficient means of investigating prospective jurors.

Ultimately, identifying unfavorable jurors is often a complex task. Jurors' voter registration or self-identified political preference are inadequate predictors of verdict orientation. The strength and dimension of jurors' political beliefs, the extent to which they engage in political-related behaviors and activities, and the reasons why a juror favors a particular party can be significant predictors of verdict

orientation. Yet, this knowledge still must be considered within the context of particular case issues and a multitude of other indicators that can signal a risky juror. Effective juror selection strategies typically require a talented team of professionals. The attorney conducting *voir dire* must focus on connecting with the jury, asking the right questions, and framing strategic follow-up questions to maximize the potential for identifying unfavorable jurors, and – more importantly – pursuing cause strikes. Other members of the trial team should be occupied recording questionable or alarming

juror responses that may be grounds for cause strikes, as well as identifying any risky jurors from their perspective and their rationale for identifying these jurors as such. A qualified Litigation Consultant, as an extension of the trial team, can help you ask the questions that will yield the most predictive information, guide you towards achieving cause strikes, and quickly analyze all juror responses so that you make jury selection decisions grounded in scientific research that produces real results.

  
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